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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,398	08/28/2003	Elvin R. Lukenbach	JBP-5014	6758

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PHILIP S. JOHNSON  
JOHNSON & JOHNSON  
ONE JOHNSON & JOHNSON PLAZA  
NEW BRUNSWICK, NJ 08933-7003

EXAMINER
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MRUK, BRIAN P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 02/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/650,398

Applicant(s)

LUKENBACH ET AL.

Examiner

Brian P Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7,9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9 and 11-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

HL

### **DETAILED ACTION**

1. This Office action is in response to Applicant's amendment filed December 6, 2004. Applicant has amended claims 1, 9 and 11-13. Claims 8, 10 and 14 have been canceled. Currently, claims 1-7, 9 and 11-13 remain pending in the application.
2. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office action, Paper No. 20041027.
3. The rejection of claims 8, 10, and 12-14 under 35 U.S.C. 112, second paragraph, is withdrawn in view of applicant's amendments and remarks.
4. The rejection of claims 1-14 under 35 U.S.C. 102(e) as being anticipated by Shana'a et al, U.S. Patent No. 6,737,394, is withdrawn in view of applicant's amendments and remarks.
5. The rejection of claims 1-7, 9 and 11-13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of copending Application No. 10/650,226 is maintained for the reasons of record.

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6. The rejection of claims 1-14 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/650,573 is withdrawn in view of applicant's amendments and remarks.

7. The rejection of claims 1-7, 9 and 11-13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 and 12-15 of copending Application No. 10/650,495 is maintained for the reasons of record.

### **NEW GROUNDS OF REJECTION**

#### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-7, 9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shana'a et al, U.S. Patent No. 6,737,394.

Shana'a et al, U.S. Patent No. 6,737,394, discloses an isotropic cleansing composition for cleaning the human body (see abstract and col. 1, lines 7-10) comprising surfactants, such as anionic and nonionic surfactants (see col. 2, lines 7-10) and a thickening agent, such as hydrophobically modified, crosslinked polyacrylates (see col. 9, line 44-col. 10, line 21). It is further taught by Shana'a et al that the

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composition optionally contains a cosurfactant, such as a betaine, which encompasses compositions that are free of amphoteric surfactants (see col. 5, lines 19-21).

Specifically, note Table 2, Example IV, which discloses a composition comprising 9% by weight of a blend of ammonium laureth sulfate/ammonium lauryl sulfate/cocamide MEA/PEG-5 cocamide, 0.8% by weight of cocamidopropyl betaine, 0.5% by weight of glycerin, 1.5% by weight of CARBOPOL AQUA SF-1 (i.e. a hydrophobically modified, crosslinked polyacrylate compound), 0.1% by weight of polyquaternium-10, 1% by weight of organogel particles, and adjuncts to balance. Although Shana'a et al generally discloses a composition that is free of amphoteric surfactants, the reference does not require such a composition that is free of amphoteric surfactants with sufficient specificity to constitute anticipation.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to have formulated a composition, as taught by Shana'a et al, which was free of amphoteric surfactants, because such compositions fall within the scope of those taught by Shana'a et al. Therefore, one of ordinary skill in the art would have had a reasonable expectation of success, because such a composition that is free of amphoteric surfactants is expressly suggested by the Shana'a et al disclosure and therefore is an obvious formulation.

### ***Response to Arguments***

10. Applicant's arguments filed December 6, 2004 have been fully considered but they are not persuasive.

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Applicant argues that Shana'a et al, U.S. Patent No. 6,737,394, does not teach or suggest in general a composition that contains less than 0.5% by weight of an amphoteric surfactant. However, the examiner respectfully disagrees. Specifically, Shana'a et al generally discloses that amphoteric co-surfactants are optionally included in their compositions (see col. 5, lines 17-21 and col. 6, lines 21-27 of Shana'a et al, U.S. Patent No. 6,737,394), and thus, the examiner asserts that this teaching by Shana'a et al includes compositions that are free of amphoteric surfactants, per the requirements of the instant claims. Therefore, the examiner asserts that the instant claims are rendered obvious in view of the teachings of Shana'a et al, U.S. Patent No. 6,737,394.

It is noted by the examiner that applicant did not provide any arguments for the rejection of claims 1-7, 9 and 11-13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of copending Application No. 10/650,226 and claims 1-8 and 12-15 of copending Application No. 10/650,495. Therefore, a response to these rejections by the examiner is not necessary.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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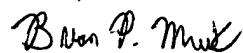
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.



Brian Mruk  
February 26, 2005



Brian P. Mruk  
Primary Examiner  
Tech Center 1700